

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-11610-jlg

4 - - - - - x

5 In the Matter of:

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7 208-214 E. 25TH ST. LLC,

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9 Debtor.

10 - - - - - x

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12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

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16 December 14, 2022

17 2:26 PM

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21 B E F O R E :

22 HON. JAMES L. GARRITY, JR.

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: JONATHAN

1 1) Motion to Allow/(i) Excuse the State Court Receiver From
2 Provisions of 11 U.S.C. Site 543(d)(1) of the Bankruptcy
3 Code, or in the alternative, Motion to Prohibit Use of Cash
4 Collateral

5 (Doc#9)

6

7 Declaration of Hayley Greenberg

8 (Doc#10)

9

10 Consent of Debtor to Continuation of the Receiver and
11 Reservation of Rights

12 (Doc#17)

13

14 Reply to Motion

15 (Doc#19)

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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23 BY: HAYLEY GREENBERG (TELEPHONICALLY)

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1 P R O C E E D I N G S

2 THE COURT: All right, good afternoon. It's Judge
3 Garrity. I'm sorry for keeping you waiting. We are here on
4 the 208-214 East 25th Street, LLC, Case Number 22-11610.
5 Can I get appearances, please?

6 MR. NEWMAN: Sure. This is Steven Newman of
7 Katsky Korins, LLP on behalf of 25th Street Multifamily,
8 LLC.

9 THE COURT: Thank you, Mr. Newman.

10 MR. ABRAMS: Good afternoon, Your Honor. My name
11 is Robert Abrams with Katsky Korins as well. I am Steve
12 Newman's partner, representing 25th Street Multifamily, LLC.

13 THE COURT: Thank you.

14 MR. DONOVAN: Your Honor, this is Ted Donovan,
15 Goldberg, Weprin, Finkel, Goldstein, for the Debtor. Mr.
16 Nash was going to appear, but he is actively engaged in the
17 Eastern District, so I am stepping in.

18 THE COURT: All right. Ms. Greenberg, you need to
19 unmute your phone, your screen. There you go, I think.

20 MS. GREENBERG: Okay, thank you. Hayley
21 Greenberg, court-appointed receiver.

22 THE COURT: Thank you, Ms. Greenberg.

23 All right, Mr. Newman, why don't you get us
24 started?

25 MR. NEWMAN: Sure. Thank you, Your Honor. So, I

1 --

2 THE COURT: Actually, I apologize for interrupting
3 you. But I would like, just before I get started on the
4 matter that brings us together this afternoon. Mr. Donovan,
5 why don't you give me a little bit of a background on who
6 the debtor is, the events leading up to the filing of the
7 bankruptcy, unless, Mr. Newman, that was something you
8 intended to do.

9 MR. NEWMAN: I am happy to do that, Your Honor.

10 THE COURT: Okay, then why don't you do that.
11 That would be fine. And, Mr. Donovan, I will hear from you
12 afterwards just to make sure that you're satisfied with Mr.
13 Newman's description. But please, go ahead, Mr. Newman.

14 MR. DONOVAN: That works, Your Honor. Thank you.

15 MR. NEWMAN: Sure. So, Your Honor, our client is
16 the current holder of a commercial mortgage loan in the
17 original amount of \$25 million that was originated by Bank
18 United in 2016. At the time of the loan, the Debtor was
19 owned by a person named Steven Croman, who is a very wealthy
20 and well-known slumlord in New York City. And he is also a
21 convicted criminal, having served prison time for crimes
22 such as grand larceny and other types of fraud. And we
23 cited to that in our papers.

24 In 2021, the Debtor began a series of payment
25 defaults, and in fact defaulted for three consecutive months

1 in paying when due the monthly installments of principal,
2 interest, and tax escrows that were roughly about \$201,000
3 and change per month. And the loan documents had a time of
4 the essence clause as to payment.

5 While those defaults were happening, Bank United
6 was not happy with these defaults, and on August 11th, after
7 the Debtor at that time was in default for the July and
8 August installment payments and in default for other fees
9 and charges under the loan documents, accelerated the loan
10 and sold the loan to my client on August 11th.

11 THE COURT: That's 2021.

12 MR. NEWMAN: 2021, that's correct. Then, about a
13 month-and-a-half later, on September 21, which is now 73
14 days after the July payment was due and 41 days after the
15 loan was accelerated by Bank United, the Debtor, through Mr.
16 Croman, sent a series of checks to my client, which he
17 purported to use to try to cure the July, August, and then
18 September payment. Because it was September 21, but there
19 wasn't a payment made even on September 10. And so he
20 purported to try to pay what he called the arrearages for
21 those three months.

22 My client wrote back and pointed out that the
23 loans accelerated and the full amount was owed and offered
24 to apply the monies against the debt. And Mr. Croman
25 repeatedly wrote back and said no, the monies could only be

1 applied to July, August, and September payments. So as a
2 result of the strings that were attached by the borrower, my
3 client returned those checks to Mr. Croman.

4 It's also worth noting -- and this was all fully-
5 briefed in the state court, that even though there were
6 three checks tendered, and be it late by 73 days late after
7 payment was due, they were even insufficient in amount by
8 many tens of thousands of dollars because they didn't
9 include all of the tax payments that were owed as part of
10 the required monthly installment, late fees, and other
11 charges.

12 The Debtor made a motion to dismiss the lender's
13 foreclosure action. The court denied that motion. In the
14 context of that motion, the Debtor actually admitted its
15 payment defaults for July and August. The lender made a
16 motion for summary judgment. The summary judgment motion
17 was fully briefed and fully submitted in mid-June, almost
18 six months ago, and remained sub judice at the time of the
19 filing of this case. The lender had also, after it acquired
20 the loan, terminated the Debtor's license to collect the
21 rents in August of 2021.

22 Now, the loan documents gave the Debtor a limited
23 license so long as there was no event of default, to collect
24 the rents. Because of the payment defaults, the lender
25 terminated that license and the lender tried to collect the

1 rents itself and sent letters to tenants, but the Debtor
2 then tried to interfere with the lender and wrote letters to
3 tenants demanding that the rent be paid to the borrower, not
4 the lender.

5 The attorney general got involved. And after
6 several months of going round and round, the lender filed a
7 motion for a receiver at the request of the attorney
8 general's office. The Debtor opposed the motion for the
9 receiver and ultimately the state court granted the receiver
10 motion and appointed Ms. Greenberg as receiver pursuant to
11 an order dated May 10th, which was annexed to our moving
12 papers. And notably in the receiver order, the state court
13 found that the Debtor defaulted in its payments under the
14 loan document. That's a finding in the order.

15 The receiver got up and running and started taking
16 control of the property in May, demanded turnover of the
17 rents, encountered grave difficulty from the borrower, who
18 continued to (indiscernible) tenants for rent, enter into
19 new leases, which required Ms. Greenberg in June, about a
20 month into her appointment, to make a motion for contempt
21 against Mr. Croman for interfering and violating the
22 injunction against interfering with her contained in the
23 receiver order. That motion for contempt remains sub judice
24 and was not ruled upon at the time of the filing of this
25 case.

1 After the filing of the contempt motion, Mr.
2 Croman started turning over certain monies in drips and
3 drabs and certain documents. Ms. Greenberg has been
4 continuing to collect the rent. She had great difficulty,
5 which she set forth in her declaration, trying to figure out
6 the kind of 52 card pickup of documents and information that
7 the Debtor presented her an accounting for the monies.

8 And while it was difficult, she persisted,
9 continued to communicate with the Debtor's management
10 company owned by Mr. Croman, and they kept feeding her more
11 information. So she has a fairly good idea of the security
12 deposits that were turned over. But as she said in her
13 declaration, she is still unable to this day to zero out to
14 the dollar how much each respective tenant posted with
15 deposits with the Debtor that she is not holding and how
16 much rent each respective tenant paid. But she is doing her
17 best and she has collected a lot of money. She has been
18 collecting a little under \$200,000 a month, and she did pay
19 a big, substantial amount of real estate taxes I believe
20 sometime in September, because the Debtor had not paid taxes
21 for over a year. It didn't pay the taxes that were due in
22 January of 2022 or July of 2022. So that's a whole year's
23 worth of taxes. And it's roughly about \$550,000 or so every
24 six months, ballpark. So there's a very substantial sum of
25 tax arrearages. She's paid that down. She's holding

1 certain monies now. And now we move forward with the
2 Debtor's filing.

3 The Debtor filed the case on November 30th. And
4 what's interesting is the Debtor announced in its Rule 1007
5 affidavit that at some point before the petition, it's
6 unclear when, the LLC interests in the Debtor were
7 apparently transferred by Mr. Croman to some trust. We have
8 no information about this trust, and the creation or the
9 transfer was a clear violation of the loan documents and a
10 breach of those as well. And the Debtor simultaneously
11 appointed David Goldwasser and his company as a chief
12 restructuring officer. So we could only glean that the case
13 was filed because the Debtor felt that the state court was
14 about to rule at any moment on the fully-briefed summary
15 judgment motion and then adjudicated the parties' rights.
16 And the Debtor was probably looking for a more favorable
17 forum to resolve those rights and engaged in forum shopping
18 to try to parachute into this Court.

19 So the other thing that's notable and we put in
20 our papers is that Mr. Croman himself is a convicted
21 criminal. David Goldwasser as well is a convicted criminal
22 who pled guilty to I believe bank fraud. And we attached a
23 copy of his criminal docket and his sentencing.

24 So this is a property that is being controlled by
25 literally criminals, and there was substantial rent involved

1 here. There's \$269,000 of monthly rent according to a rent
2 roll that was attached to the petition. So in the almost
3 year-and-a-half that the Debtor had control of the property
4 before Ms. Greenberg got in place, we believe that there's
5 almost \$3 million of rent that was diverted from the lender
6 that Mr. Croman or his affiliates are holding, and it's
7 completely unaccounted for.

8 In the petition, it was very odd. They noted that
9 there was roughly \$1.5 million placed into a Debtor's
10 counsel escrow. Well, loan documents don't provide for an
11 escrow. Debtor's counsel wasn't retained back in July of
12 2021, so we don't know where this money came from. We can't
13 even match up that money. But that's in our view our
14 collateral as well the other monies that are missing. And
15 so when this case was filed, you know, we felt that there
16 was an urgent need to protect the substantial rents, and
17 that's why we had to bring this motion on by an order
18 shortening time so that we can make sure that the rents are
19 protected. And that was the purpose of this motion.

20 If you want, I could go on and talk about the
21 motion, I could talk about the consent order that we've
22 agreed to between counsel.

23 THE COURT: Well, before we do that, Mr. Donovan,
24 do you want to be heard with respect to how you got to where
25 we are right now?

1 MR. DONOVAN: Yes, Your Honor. I'm sorry to have
2 to respond. I really had hoped that we were in this court
3 without the necessity of raising a lot of attacks against
4 Mr. Croman. I would just note that the day after the
5 petition was filed, there was an article in the Real Deal
6 salivating about the fact that the well-known landlord Steve
7 Croman was now fighting with the well-known predatory lender
8 represented by Mr. Newman. We really don't need to get into
9 that, Your Honor. This is a very simple thing.

10 There was a minor default. Rather than allow the
11 default to be cured before we even knew there was a default,
12 there was an acceleration and a sale of the note and an
13 immediate commencement of a foreclosure action, following
14 which they refused to take the payments. This is very
15 readily provided for in the Bankruptcy Code under 1124 for a
16 cure and reinstatement. That's what we intend to do.

17 THE COURT: This is a two-party case. This is a
18 two-party case. It's a single asset two-party case. The
19 single asset is the subject of a foreclosure action, whether
20 you have pending motions for summary judgment. You've
21 agreed in your stipulation with the secured creditor to
22 allow the receiver to remain in place. So you're not even
23 going to be operating the Debtor. You brought this case for
24 one reason, and you've just articulated it. What you want
25 to do is reinstate the debt. A year ago, you didn't want to

1 reinstate the debt, as you indicated in your papers. A year
2 ago -- or maybe whatever period of time it was when the
3 interest rates were more friendly, I guess. The thought was
4 you could just refinance. And I think what was indicated in
5 Mr. Nash's document is that ultimately you were not able to
6 refinance because you couldn't agree on the amount of
7 interest that had to be paid. But now -- and I'm just
8 assuming it's because of where interest rates have gone --
9 now you're looking and saying, well, what we're going to do
10 is we're going to have a plan. That's a secured creditor
11 and the New York City -- either state or city tax authority
12 that's owed or shown to be owed over a million dollars -- or
13 I'm sorry, maybe it's 150. I apologize, I can't remember
14 the dollar amount. But that's all this is. This is a two-
15 party dispute. And I don't know why it's in this court.
16 And I don't think -- frankly, I don't think it should be in
17 this court.

18 MR. DONOVAN: Your Honor, Section 1124 provides
19 that we can --

20 THE COURT: I know. I know what 1124 provides.

21 MR. DONOVAN: And therefor, Your Honor, the
22 statute allows us to try to put together a plan, which we
23 intend to do very quickly.

24 THE COURT: Yeah. And the Second Circuit in In re
25 C-TC 9th Avenue Partnership talked about bad faith filings.

1 And --

2 MR. DONOVAN: Your Honor, in that case, they were
3 talking about --

4 THE COURT: Excuse me. Excuse me.

5 MR. DONOVAN: -- operating entities, not single-
6 asset real estate cases.

7 THE COURT: Excuse me.

8 MR. DONOVAN: I'm sorry, I couldn't tell that you
9 were talking, Your Honor.

10 THE COURT: Excuse me.

11 MR. DONOVAN: I'm sorry.

12 THE COURT: It's all right.

13 MR. DONOVAN: I thought you'd stopped.

14 THE COURT: Okay. Look, I'll entertain a motion
15 to dismiss this case. I have no problem with that. And
16 I'll keep my mind open on it. But this is a two-party case.
17 That's all it is. And what you want to do is you want to
18 move this out of the state court where you don't have those
19 kinds of remedies and bring it here where you have one --
20 you have literally a secured creditor and some -- and a
21 taxing authority. So your plan is going to say we're going
22 to pay the taxes I guess -- pay them in full, I don't know
23 what you're going to do there -- and we're going to
24 reinstate the mortgage, and that's our plan.

25 MR. DONOVAN: Yes, sir. And pay the creditor a

1 hundred cents on the dollar, whatever his allowed claim is.

2 THE COURT: Yeah, right.

3 MR. DONOVAN: Which is precisely in line with the
4 statute.

5 THE COURT: I don't think it belongs here. I
6 don't think it belongs here. And, you know, and again, I
7 will be prepared if a motion is made to deal with it. But I
8 don't think it belongs here.

9 MR. DONOVAN: In the meantime, Your Honor, if I
10 might, we do have a consensual order for today. It does
11 keep the receiver in place. There is a provision in it to
12 the effect that the receiver is not required to provide
13 reports. We are going to address that among ourselves so
14 that we make sure that we get the information that we need
15 to file our operating reports. But for purposes of today,
16 the Debtor is prepared to consent to the order as drafted
17 and submitted already I believe to the Court.

18 THE COURT: Yeah, we did have -- and I did have
19 one question about one of the provisions, and that's on Page
20 4, Paragraph 5. And on the document I'm looking at, I have
21 -- I've got it printed out. So it's on the top of Page 4.
22 Just let me know when you guys get there.

23 MR. NEWMAN: I'm at Paragraph 5, Your Honor.

24 MS. ABRAMS: Yes, sir.

25 THE COURT: Yeah. So all other funds held by the

1 Debtor or his counsel including without limitation to
2 balance of Debtor counsel's funds, shall not be disbursed or
3 transferred in any way absent, one, further order of the
4 court, and then second, or express written consent of
5 counsel.

6 I think we should just put it at one and just do
7 that. I don't have any problem --

8 MR. DONOVAN: Yeah, I don't need you to be giving
9 me a hard time --

10 THE COURT: I'm sorry?

11 MR. DONOVAN: I'm sorry, Your Honor. That -- so
12 you just want to take out Clause Two?

13 THE COURT: All I'm saying is I don't have any
14 problem if you have written consent, but I would like it to
15 be so ordered by the Court.

16 MR. NEWMAN: No problem, Your Honor.

17 THE COURT: I think there should be a court order
18 is the bottom line.

19 MR. DONOVAN: That's acceptable, Your Honor.

20 THE COURT: All right. So what I think you should
21 do I would suggest is that where the language goes absent
22 and then (i), a further order of the court, I would strike
23 the (i) and then just say absent further order of this
24 court, period. But otherwise, I didn't have any questions
25 or any other concerns with this in order, you know, to leave

1 the receiver in place and allow the bills that have to get
2 paid, et cetera, to be able to do that.

3 So if what you'd like to do, Mr. Newman, after
4 you've revised the order, run it by Mr. Donovan.

5 MR. DONOVAN: Your Honor, if I might. We are
6 moving our offices and are about to turn our computers off
7 in 15 minutes. So I'm perfectly happy to trust Mr. Newman
8 to make that change.

9 THE COURT: All right.

10 MR. DONOVAN: I don't want to tie it up if we
11 can't get to it.

12 MR. NEWMAN: That's fine. Could I insert an s-
13 slash for your signature, Mr. Donovan?

14 MR. DONOVAN: Yes.

15 MR. NEWMAN: Thank you.

16 THE COURT: All right. So you'll -- okay, so make
17 that change, and you'll get us a document, we'll get it
18 entered and we'll be in business.

19 MR. NEWMAN: Terrific. Thank you very much.

20 THE COURT: Thank you. Mr. Donovan, are you --
21 where are you moving to?

22 MR. DONOVAN: Well, right now we're in the middle
23 of Times Square. And we're moving across town to -- across
24 the street from Grand Central. And it's a simple, little
25 move, but we'll have no computer access for the next two

1 days and limited emails. And I'm ready to just scream.

2 THE COURT: All right.

3 MR. DONOVAN: And therefore, Your Honor, I would
4 ask that you not entertain any orders to show cause on this
5 until Monday.

6 THE COURT: Well, what I would ask is, Mr. Newman,
7 if you are going to make that motion, you'll reach out to
8 Mr. Donovan, you'll let him know. You'll work out a
9 schedule for hearing it, et cetera. Okay?

10 MR. NEWMAN: Yes.

11 THE COURT: All right. Thank you.

12 MR. DONOVAN: Thank you very much, Your Honor.

13 MR. NEWMAN: Nice to see you, Your Honor.

14 THE COURT: Bye. Thanks very much.

15 MS. GREENBERG: Thank you.

16 THE COURT: Sure. Thank you. Bye-bye.

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18 (Whereupon these proceedings
19 were concluded)

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I N D E X

RULINGS

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Leave the receiver in place	13	24

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: December 20, 2022

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b	b 1:21 back 6:22,25 11:11 background 5:5 bad 13:25 balance 16:2 baldwin 3:21 ballpark 9:24 bank 5:17 6:5 6:15 10:22 bankruptcy 1:1,12,23 2:2 5:7 12:15 began 5:24 behalf 4:7 believe 9:19 10:22 11:4 15:17 belongs 15:5,6 15:8 best 9:17 big 9:19 bills 17:1 bit 5:5 borrower 7:2 8:3,17 bottom 16:18 bowling 1:13	c	
	c 3:1 4:1 13:25 20:1,1 called 6:20 can't 11:12 13:13 17:11 card 9:6 case 1:3 4:4 7:19 8:25 10:3 10:12 11:15 12:17,18,18,23 14:2,15,16 cases 14:6 cash 2:3 cause 18:4 central 17:24 cents 15:1 certain 9:2,3 10:1 certified 20:3 cetera 17:2 18:9 change 6:3 17:8,17 charges 6:9 7:11		

13:15,17,20,24 14:4,7,10,12 14:14,18 15:2 15:5,17,18,25 16:4,10,13,15 16:17,17,20,22 16:24 17:9,16 17:20 18:2,6 18:11,14,16 creation 10:8 creditor 12:21 13:10 14:20,25 crimes 5:21 criminal 5:21 10:21,21,23 criminals 10:25 croman 5:19 6:16,24 7:3 8:21 9:2,10 10:7,20 11:6 12:4,7 cure 6:17 12:16 cured 12:11 current 5:16	debtor 1:9 2:10 3:4,12 4:15 5:6 5:18,24 6:7,15 7:12,14,22 8:1 8:8,13 9:7,15 9:20 10:3,4,6 10:10,13,16 11:3 12:23 15:16 16:1,2 debtor's 7:20 9:9 10:2 11:9 11:11 december 1:16 20:25 declaration 2:7 9:5,13 default 6:7,8 7:23 12:10,11 12:11 defaulted 5:25 8:13 defaults 5:25 6:5,6 7:15,24 demand 8:16 demanding 8:3 denied 7:13 deposits 9:12 9:15 description 5:13 didn't 7:8 9:21 12:25 16:24 difficult 9:8 difficulty 8:17 9:4	disbursed 16:2 dismiss 7:12 14:15 dispute 13:15 district 1:2 4:17 diverted 11:5 doc 2:5,8,12,15 docket 10:23 document 8:14 13:5 15:20 17:17 documents 6:3 6:9 7:22 9:3,6 10:9 11:10 doing 9:16 dollar 9:14 13:14 15:1 dollars 7:8 13:12 donovan 3:16 4:14,14 5:4,11 5:14 11:23 12:1 13:18,21 14:2,5,8,11,13 14:25 15:3,9 16:8,11,19 17:4,5,10,13 17:14,20,22 18:3,8,12 don't 4:23 5:5 5:10 11:10,12 12:8 13:15,16 13:16 14:18,22 15:5,6,8 16:7,8 16:13 17:10	drabs 9:3 drafted 15:16 drips 9:2 due 6:1,14 7:7 9:21 e e 1:7,21,21 3:1 3:1 4:1,1 19:1 20:1 east 4:4 eastern 4:17 ecro 1:25 effect 15:12 either 13:11 emails 18:1 encountered 8:17 engaged 4:16 10:17 enter 8:18 entered 17:18 entertain 14:14 18:4 entities 14:5 escrow 11:10 11:11 escrows 6:2 essence 6:4 estate 9:19 14:6 et 17:2 18:9 event 7:23 events 5:6 excuse 2:1 14:4 14:4,7,10 express 16:4
d	d 2:2 4:1 19:1 date 20:25 dated 8:11 david 10:11,21 day 9:13 12:4 days 6:14,14 7:6 18:1 deal 12:5 15:7 debt 6:24 12:25 13:1		

[f - interfering]

Page 4

f	fraud 5:22 10:22 friendly 13:3 full 6:23 14:22 fully 7:4,17,17 10:14 funds 15:25 16:2 further 16:3,22 16:23	granted 8:9 grave 8:17 great 9:4 green 1:13 greenberg 2:7 3:18,23 4:18 4:20,21,22 8:10,19 9:3 11:4 18:15 guess 13:3 14:22 guilty 10:22 guys 15:22	hoped 12:2 hundred 15:1 hyde 2:25 20:3 20:8
f 1:21 20:1 fact 5:25 12:6 fairly 9:11 faith 13:25 favorable 10:16 feeding 9:10 fees 6:8 7:10 felt 10:13 11:15 fighting 12:7 figure 9:5 file 15:15 filed 8:6 10:3 10:13 11:15 12:5 filing 5:6 7:19 8:24 9:1 10:2 filings 13:25 finding 8:14 fine 5:11 17:12 finkel 3:11 4:15 floor 3:13 following 12:13 foreclosure 7:13 12:13,19 foregoing 20:3 forth 9:5 forum 10:17 10:17 forward 10:1 found 8:13 frankly 13:16	g g 4:1 garrity 1:22 4:3 general 8:5 general's 8:8 give 5:5 giving 16:8 glean 10:12 go 4:19 5:13 11:20 goes 16:21 going 4:16 8:6 12:23 13:9,10 14:21,21,23,23 15:13 18:7 goldberg 3:11 4:15 goldstein 3:11 4:15 goldwasser 10:11,21 good 4:2,10 9:11 grand 3:20 5:22 17:24	h h 3:9 half 6:13 11:3 happening 6:5 happy 5:9 6:6 17:7 hard 16:9 hayley 2:7 3:23 4:20 hear 5:11 heard 11:24 hearing 18:9 held 15:25 holder 5:16 holding 9:15 9:25 11:6 hon 1:22 honor 4:10,14 4:25 5:9,14,15 12:1,9 13:18 13:21 14:2,9 15:9,23 16:11 16:16,19 17:5 18:3,12,13	i idea 9:11 immediate 12:13 include 7:9 including 16:1 indicated 13:1 13:4 indiscernible 8:18 information 9:6,11 10:8 15:14 injunction 8:22 insert 17:12 installment 6:8 7:10 installments 6:1 insufficient 7:7 intend 12:16 13:23 intended 5:8 interest 6:2 13:3,7,8 interesting 10:4 interests 10:6 interfere 8:2 interfering 8:21,22

[interrupting - multifamily]

interrupting 5:2 involved 8:5 10:25 it's 4:2 9:23 10:5 11:6 12:18 13:8,13 13:15 14:12 15:21 17:24 i'll 14:14,16 i'm 4:3 12:1 13:7,13 14:8 14:11 15:20,23 16:10,11,13 17:7 18:1 i've 15:21	keep 14:16 15:11 keeping 4:3 kept 9:10 kind 9:6 kinds 14:19 knew 12:11 know 11:12,15 13:15,20,20 14:22 15:6,22 16:25 18:8 known 5:20 12:6,7 korins 3:3 4:7 4:11	limited 7:22 18:1 line 15:3 16:18 19:4 literally 10:25 14:20 little 5:5 9:18 17:24 llc 1:7 4:4,8,12 10:6 llp 3:3,11 4:7 loan 5:16,18 6:3,9,9,10,15 7:20,22 8:14 10:9 11:10 loans 6:23 long 7:23 look 14:14 looking 10:16 13:9 15:20 lot 9:17 12:3	mind 14:16 mineola 20:23 minor 12:10 minutes 17:7 missing 11:14 moment 10:14 monday 18:5 money 9:17 11:12,13 monies 6:24,25 9:2,7 10:1 11:14 month 6:3,13 8:20 9:18 monthly 6:1 7:10 11:1 months 5:25 6:21 7:18 8:6 9:24 mortgage 5:16 14:24 motion 2:1,3 2:14 7:12,13 7:14,16,16 8:7 8:8,10,20,23 9:1 10:15 11:17,19,21 14:14 15:7 18:7 motions 12:20 move 10:1 14:18 17:25 moving 8:11 17:6,21,23 multifamily 4:7,12
j	l 1:22 landlord 12:6 language 16:21 larceny 5:22 late 7:6,6,10 leading 5:6 leases 8:19 leave 16:25 19:5 ledanski 2:25 20:3,8 legal 20:20 lender 7:15,19 7:24,25 8:2,4,6 11:5 12:7 lender's 7:12 letters 8:1,2 license 7:20,23 7:25 limitation 16:1	m	
james 1:22 january 9:22 jlg 1:3 jonathan 1:25 jr 1:22 judge 1:23 4:2 judgment 7:16 7:16 10:15 12:20 judice 7:18 8:23 july 6:7,14,17 7:1,15 9:22 11:11 june 7:17 8:19		made 6:19 7:12 7:15 15:7 make 5:12 8:20 11:18 15:14 17:8,16 18:7 management 9:9 match 11:13 matter 1:5 5:4 merola 3:18 mid 7:17 middle 17:22 million 5:17 11:5,9 13:12	
k			
katsky 4:7,11 katzky 3:3			

[n - provides]

Page 6

n	o	17:2	place 11:4
n 3:1 4:1 19:1 20:1 name 4:10 named 5:19 nash 4:16 nash's 13:5 necessity 12:3 need 4:18 11:16 12:8 15:14 16:8 new 1:2,14 3:6 3:14 5:20 8:19 13:11 newman 3:9 4:6,6,9,23,25 5:7,9,13,15 6:12 12:8 15:23 16:16 17:3,7,12,15 17:19 18:6,10 18:13 newman's 4:12 5:13 nice 18:13 notable 10:19 notably 8:12 note 12:4,12 noted 11:8 noting 7:4 november 10:3 number 4:4 ny 1:14 3:6,14 3:21 20:23	o 1:21 4:1 20:1 odd 11:8 offered 6:23 office 8:8 officer 10:12 offices 17:6 okay 4:20 5:10 14:14 17:16 18:9 old 20:21 open 14:16 operating 12:23 14:5 15:15 opposed 8:8 order 8:11,12 8:14,23 11:17 11:21 15:10,16 16:3,17,22,23 16:25 17:4 ordered 16:15 orders 18:4 original 5:17 originated 5:17 owed 6:23 7:9 13:12,12 owned 5:19 9:10	papers 5:23 8:12 10:20 13:1 parachute 10:18 paragraph 15:20,23 part 7:9 parties' 10:15 partner 4:12 partnership 13:25 party 12:17,18 12:18 13:15 14:16 pay 6:20 9:18 9:21 14:22,22 14:25 paying 6:1 payment 5:24 6:4,14,18,19 7:7,15,24 payments 6:8 7:1,9 8:13 12:14 pending 12:20 perfectly 17:7 period 13:2 16:24 persisted 9:8 person 5:19 petition 10:5 11:2,8 12:5 phone 4:19 pickup 9:6	place 11:4 12:22 15:11 17:1 19:5 placed 11:9 plan 13:10,22 14:21,24 please 4:5 5:13 pled 10:22 pm 1:17 point 10:5 pointed 6:22 posted 9:14 precisely 15:3 predatory 12:7 prepared 15:7 15:16 presented 9:7 principal 6:1 printed 15:21 prison 5:21 probably 10:16 problem 14:15 16:7,14,16 proceedings 18:18 20:4 prohibit 2:3 property 8:16 10:24 11:3 protect 11:16 protected 11:19 provide 11:10 15:12 provided 12:15 provides 13:18 13:20
	<p style="text-align: center;">p</p> p 3:1,1 4:1 page 15:19,21 19:4 paid 8:3 9:16 9:20,25 13:7		

provision 15:11 provisions 2:2 15:19 purported 6:17,20 purpose 11:19 purposes 15:15 pursuant 8:10 put 10:19 13:22 16:6	record 20:4 refinance 13:4 13:6 refused 12:14 reinstate 12:25 13:1 14:24 reinstatement 12:16 remain 12:22 remained 7:18 remains 8:23 remedies 14:19 remember 13:13 rent 8:3,18 9:4 9:16 10:25 11:1,1,5 rents 7:21,24 8:1,17 11:16 11:18 repeatedly 6:25 reply 2:14 reports 15:13 15:15 represented 12:8 representing 4:12 request 8:7 required 7:10 8:19 15:12 reservation 2:11 resolve 10:17 respect 11:24	respective 9:14 9:16 respond 12:2 restructuring 10:12 result 7:2 retained 11:11 returned 7:3 revised 17:4 right 4:2,18,23 11:25 14:12 15:2 16:20 17:9,16,22 18:2,11 rights 2:11 10:15,17 road 20:21 robert 3:8 4:11 roll 11:2 roughly 6:2 9:23 11:9 round 8:6,6 rule 10:4,14 ruled 8:24 rulings 19:3 run 17:4 running 8:15	screen 4:19 second 13:24 16:4 section 13:18 secured 12:21 13:10 14:20 security 9:11 see 18:13 sent 6:16 8:1 sentencing 10:23 september 6:13,18,18,19 7:1 9:20 series 5:24 6:16 served 5:21 set 9:5 several 8:6 she's 9:25,25 shopping 10:17 shortening 11:18 show 18:4 shown 13:12 signature 17:13 20:7 simple 12:9 17:24 simultaneously 10:10 single 12:18,19 14:5 sir 14:25 15:24 site 2:2
q			
question 15:19 questions 16:24 quickly 13:23			
r			
r 1:21 3:1 4:1 20:1 raising 12:3 rates 13:3,8 rather 12:10 reach 18:7 readily 12:15 ready 18:1 real 9:19 12:5 14:6 really 12:2,8 reason 12:24 receiver 2:1,10 4:21 8:7,9,9,10 8:12,15,23 12:22 15:11,12 17:1 19:5 reciever 3:19		s 3:1 4:1 17:12 sale 12:12 salivating 12:6 satisfied 5:12 saying 13:9 16:13 schedule 18:9 scream 18:1	

[six - under]

Page 8

six 7:18 9:24 slash 17:13 slumlord 5:20 sold 6:10 solutions 20:20 sonya 2:25 20:3,8 sorry 4:3 12:1 13:13 14:8,11 16:10,11 southern 1:2 square 17:23 st 1:7 started 4:24 5:3 8:15 9:2 state 2:1 7:5 8:9,12 10:13 13:11 14:18 states 1:1,12 statute 13:22 15:4 stepping 4:17 steve 4:11 12:6 steven 3:9 4:6 5:19 stipulation 12:21 stopped 14:13 street 4:4,7,12 17:24 strike 16:22 strings 7:2 sub 7:18 8:23 subject 12:19 submitted 7:17 15:17	substantial 9:19,24 10:25 11:16 suggest 16:21 suite 3:20 20:22 sum 9:24 summary 7:16 7:16 10:14 12:20 sure 4:6,25 5:12,15 11:18 15:14 18:16 <hr/> t t 20:1,1 take 12:14 16:12 talk 11:20,21 talked 13:25 talking 14:3,9 tax 6:2 7:9 9:25 13:11 taxes 9:19,20 9:21,23 14:22 taxing 14:21 tc 13:25 ted 3:16 4:14 telephonically 3:8,9,16,23 tell 14:8 tenant 9:14,16 tenants 8:1,3 8:18 tendered 7:6 tens 7:8 terminated 7:20,25	terrific 17:19 thank 4:9,13 4:20,22,25 5:14 17:15,19 17:20 18:11,12 18:15,16 thanks 18:14 that's 6:11,12 8:14 9:22 10:19 11:13,17 12:16 13:10,12 13:14 14:17,24 15:19 16:19 17:12 therefor 13:21 there's 9:24 11:1,4 thing 10:19 12:9 think 4:19 13:4 13:16,16 15:5 15:6,8 16:6,17 16:20 third 3:5 thought 13:3 14:13 thousands 7:8 three 5:25 6:21 7:6 tie 17:10 time 5:18,21 6:3,7 7:18 8:24 11:18 13:2 16:9 times 17:23 today 15:10,15	together 5:4 13:22 top 15:21 town 17:23 transcribed 2:25 transcript 20:4 transfer 10:9 transferred 10:7 16:3 tried 7:25 8:2 true 20:4 trust 10:7,8 17:7 try 6:17,20 10:18 13:22 trying 9:5 turn 17:6 turned 9:12 turning 9:2 turnover 8:16 two 12:17,18 12:18 13:14 14:16 16:12 17:25 types 5:22 <hr/> u u.s. 1:23 u.s.c. 2:2 ultimately 8:9 13:5 unable 9:13 unaccounted 11:7 unclear 10:6 under 6:9 8:13 9:18 12:15
--	--	--	---

[united - zero]

Page 9

united 1:1,12 5:18 6:5,15 unmute 4:19 urgent 11:16 use 2:3 6:17	x
	x 1:4,10 19:1
	y
v	yeah 13:24 15:2,18,25 16:8 year 9:21 11:3 12:25 13:1 year's 9:22 york 1:2,14 3:6 3:14 5:20 13:11 you'd 14:13 17:3 you'll 17:16,17 18:7,8,8 you're 5:12 12:22 13:9 14:23 you've 12:20 12:24 17:4
veritext 20:20 view 11:13 violating 8:21 violation 10:9	
w	
waiting 4:3 want 11:20,24 12:24,25 14:17 14:17 16:12 17:10 wasn't 6:19 11:11 way 16:3 wealthy 5:19 weprin 3:11 4:15 we'll 17:17,18 17:25 we're 13:9,10 14:21,23 17:22 17:23 we've 11:21 what's 10:4 work 18:8 works 5:14 worth 7:4 9:23 written 16:4,14 wrote 6:22,25 8:2	z zero 9:13